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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 510-511

IN THE MATTER OF

CHICAGO RAILWAYS COMPANY, ET AL.,

DEBTORS.

CHICAGO TRANSIT AUTHORITY,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS AND JOHN E. SULLIVAN, LIQUIDATING TRUSTEE, ETC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF PETITION.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The matter involved here is an order of the United States Court of Appeals for the Seventh Circuit entered on November 18, 1949 (R. 111), affirming in substance an order of the United States District Court for the Northern

District of Illinois, Eastern Division, entered on February 24, 1949 (R. 85). This order held that the statutory tax exemption which had been granted to Chicago Transit Authority, a municipal corporation, was not available with respect to any part of the 1947 personal property taxes assessed against properties owned by the Chicago Surface Lines for part of the year but acquired by Chicago Transit Authority on September 30, 1947.

The question is whether the tax exemption can be applied for part of a year.

This petition is probably the final chapter in the reorganization of Chicago Surface Lines and Chicago Rapid Transit Company. Other questions in that reorganization were before this Court on two previous occasions, involving petitions for certiorari. The previous petitions related to the later stages of the reorganization just prior to petitioner's acquisition of the properties of the bankrupt Chicago Surface Lines and Chicago Rapid Transit Company. In the first petition certain Chicago Railways Company bondholders and others, sought to review the Court of Appeals' order upholding the plan of reorganization which had excluded them from participation, 160 F. (2d) 59, 67 (cert. denied 331 U. S. 808). In the second certain bondholders sought review of the dismissal of an appeal which had attempted to modify the order of sale (cert. denied, 333 U. S. 828).

If this Court had on either of those occasions sustained the purely harassing technical objections of those minor bondholder groups, the long sought public ownership of Chicago's major local transportation systems would have been thwarted. The plan, however, was consummated on September 30, 1947, when Chicago Transit Authority by purchase acquired the properties. This was the culmination of more than twenty years of constant planning and litigation, involving seemingly insuperable obstacles, dur-

ing which five prior major attempts at reorganization had ended in failure.

The public importance of this petition becomes apparent, involving as it does one of the important questions likely to arise in every effort at public ownership of local transportation facilities. Other cities are already well advanced in their plans for the creation of similar authorities for public ownership. It is inevitable that the precise tax exemption question involved herein, which has never before been presented to this Court, will arise repeatedly as public ownership of local transportation systems spreads throughout the country. And the question will often arise in the federal courts, which are frequently the conduit leading to such ownership.

It is imperative that this Court now settle this question of rather large public importance. Not only does a decision of the question occupy a relatively important place in every similar attempt at public ownership, but it will also have a not insignificant effect on petitioner's financial condition, as it involves over four hundred thousand dollars.

The decision of the Court of Appeals has neither followed Illinois law nor the law of any other state. In Illinois the precise question has not been adjudicated; in every other state where it has arisen the position corresponding to that of petitioner here has been upheld. Moreover, the decision conflicts with the rule announced by the Court of Appeals for the Third Circuit in *United States* v. *Certain Parcels of Land in Philadelphia, Pa.*, 130 F. (2d) 782 (1942) (C. C. A. 3).

The taxes were assessed by the State of Illinois against the trustees in bankruptcy for Chicago Surface Lines, who controlled and operated the properties on April 1, 1947, the so-called assessment day in Illinois. The State filed its claim for the entire year's taxes in the reorganization proceedings in the district court, and petitioner, as

purchaser of the assessed properties, was permitted to intervene and file its Answer and Objections.

If the claim of the State is allowed in full, petitioner, a tax exempt municipal corporation, will be forced to pay an amount exceeding $405,000 representing taxes for the last three months of 1947, because under the Plan of Reorganization (R. 18), it is obliged to indemnify the Trustees against the liability for taxes beyond September 30, 1947, the date of transfer of the properties.

The State filed a motion to strike petitioner's answer which was allowed by the district court in the order from which the appeal was taken, the district court holding that because petitioner was not the owner of the personal properties on April 1, 1947, the properties were subject to taxation for the entire year 1947. On appeal, this order was affirmed by the Court of Appeals and Chicago Transit Authority is herein seeking review by certiorari.

Petitioner is a municipal corporation and political subdivision of the State of Illinois created by the Metropolitan Transit Authority Act, approved April 12, 1945, (Ill. Rev. Stats. 1947, Ch. 111⅔, Par. 300 *et seq.*), as a nonprofit, self-supporting public body to take over the properties and operations of the Chicago Surface Lines and the elevated railroad system of Chicago Rapid Transit Company and to furnish a modern, efficient, comprehensive local transportation system for the metropolitan area of Chicago. The Act further provides that it is to have no taxing power whatsoever, and that its income is to be derived solely from revenues. Its expenditures are limited to certain purposes specified in the Act, but none of such purposes is the payment of general property taxes. It is not disputed that Chicago Transit Authority has a statutory tax exemption (Ill. Rev. Stats., 1947, Ch. 120, Par. 500, sub. par. 13). The legality of the exemption has been

upheld (*People* v. *Chicago Transit Authority*, 392 Ill. 77, 94).

The pro rata abatement of taxes when a municipal corporation acquires property after assessment day has never been decided in Illinois. In the jurisdictions where the precise question presented by the facts in this case has been litigated, it has been held, without exception, that the tax exemption of a public body, as distinguished from that of a charitable, educational or religious institution, is effective for at least its period of holding during the year. The reasoning of those decisions (which make the distinction last mentioned) applies to Illinois with like force. The Court of Appeals has failed to follow the local law—and the writ should be granted.

II.

JURISDICTIONAL STATEMENT.

The decision sought to be reviewed is that of the United States Court of Appeals for the 7th Circuit, entered on November 18, 1949. The jurisdiction of this court is invoked under Title 28, U. S. Code, Section 1254 (Judicial Code, Section 1254).

III.

THE QUESTIONS PRESENTED.

1. Can a tax exempt municipal corporation and political subdivision of the State of Illinois be held liable for taxes either directly or indirectly?

2. Should petitioner's statutory exemption from taxes be given effect for the last quarter of the year 1947 during which period it owned and operated the assessed properties for public purposes?

3. Can petitioner, a tax exempt municipal corporation, be held liable for personal property taxes for that part of the year during which it owned and used the personal property for public purposes?

4. Did the Court of Appeals err in disregarding the fact that under the statute in Illinois the 1947 personal property taxes did not become a lien on the properties until many months after petitioner had acquired them for public purposes, thereby failing to follow the rule prescribed by the Court of Appeals for the Third Circuit and by many State courts that the correct test as to whether taxes can be apportioned is whether the tax was a lien on the property at the time title vested in the public body?

5. Did the Court of Appeals also err in disregarding the even broader general rule adopted by all other courts that have ever considered the question, that the tax exemption of a municipal corporation, unlike that of a charitable, religious or educational corporation, is effective immediately upon its acquisition of the property, regardless of whether a lien had previously attached, and that all proceedings thereafter to assess, collect or enforce

taxes, either directly or indirectly, applicable to its period of holding are void?

6. What is the effect of Chicago Transit Authority's tax exemption on the State's claim for 1947 personal property taxes which nominally were assessed against the Trustee?

7. Did the Court of Appeals err in holding as controlling the Illinois cases relied on by the State, none of which involved a municipal corporation or personal property taxes, but only educational and religious institutions and real property taxes which had attached as statutory liens on the respective properties before they were acquired by the various institutions?

8. Does the statute in Illinois, which provides that the owner of property on April 1st shall be liable for the taxes of that year, subject property privately owned on April first to taxes for the full year regardless of whether a tax exempt public body thereafter acquires it for public purposes, or is it not the primary intent of this statute to fix the tax liability to the State as between successive private owners?

9. Did the Court of Appeals err in holding that the intent of the tax proration provisions of the Plan of Reorganization was to burden petitioner, the tax exempt purchaser of the properties, with a portion of the year's taxes, or should it have held that the said provision intended that indemnification of the Trustee against taxes after the date of transfer would be accomplished by giving effect to the tax exemption of the purchaser, which was mentioned in that very provision?

IV.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1. The decision of the Court of Appeals involves a question of considerable public importance affecting the municipal acquisition and operation of a public transportation system. It has a probable involvement in the possible acquisition and operation of public transportation systems by other municipal corporations in the future. If undisturbed, it will impose a substantial tax burden upon petitioner.

2. The decision of the Court of Appeals has neither followed the law of Illinois nor of any other state. It also conflicts with the rule announced by the Court of Appeals for the Third Circuit.

3. The Court of Appeals ignored the law of the land which has universally recognized the distinction between the tax exemption status of a municipal corporation and that of a charitable, educational or religious institution; the exemption of a municipal corporation is effective immediately upon its acquisition of the property, and all proceedings thereafter to assess, collect or enforce taxes, either directly or indirectly, applicable to its period of holding are void.

V.

PRAYER.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this court a full and complete transcript of the record of the proceedings of the said Court of Appeals had in case numbered and entitled on its docket, Nos. 9892, 9893, In the Matter of Chicago Railways Company, *et al.*, Debtors, Chicago Transit Authority, Intervenor-Appellant, *vs.* People of the State of Illinois and John E. Sullivan, Liquidating Trustee, Etc., Appellees; to the end that this cause may be reviewed and determined by this Court, as provided by the statutes of the United States; and that judgment herein of said Court of Appeals be reversed by the court, and for such further relief as to this court may seem proper.

Respectfully submitted,

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December, 1949.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the District Court is set forth in the record at page 85. It is not reported.

The opinion of the Court of Appeals is set forth in the record at page 111. It is not yet reported.

JURISDICTION AND STATEMENT.

The basis of jurisdiction and the statement of the case have been set forth above in the petition (pp. 1-5).

SPECIFICATION OF ERRORS.

1. The Court of Appeals erred in affirming in substance the judgment of the District Court striking petitioner's Answer and Objections.

2. The Court of Appeals erred in not abating that part of the State's claim for 1947 personal property taxes applicable to petitioner's period of holding during the year.

3. The Court of Appeals erred in ignoring the universal rule that the tax exemption of a municipal corporation, unlike that of a charitable, educational or religious institution, becomes immediately effective upon its acquisition of the property, particularly where there is no lien.

4. The Court of Appeals erred in holding as controlling on the question of apportionment, *People* v. *Deutsche Gemeinde,* 249 Ill. 132, and other Illinois cases involving religious and educational institutions and not municipal corporations, and wherein also the statutory lien for real estate taxes had attached prior to acquisition of the properties by the various institutions.

5. The Court of Appeals erred in holding that purchase of the assessed properties on September 30, 1947 by petitioner, a tax exempt municipal corporation, did not affect in any way the State's right to recover taxes for the full year 1947.

6. The Court of Appeals erred in holding as immaterial the fact that no lien had attached to the assessed properties at the time they were acquired by petitioner.

7. The effect of the decision of the Court of Appeals is to impose a tax on a tax exempt political subdivision of the State of Illinois in violation of the manifest intent of the state statute by the device of calling the taxes a purchase price adjustment.

SUMMARY OF ARGUMENT.

This case presents compelling reasons for certiorari.

The Court of Appeals has not followed the local law. Its decision is inconsistent with every authoritative holding and conflicts with the undoubted inferences to be drawn from the Illinois cases (where the exact question has not been adjudicated). It also conflicts with the rule announced by the Court of Appeals for the Third Circuit in *United States* v. *Certain Parcels of Land in Philadelphia, Pa.*, 130 F. (2d) 782 (C. C. A. 3, 1942).

The Court of Appeals based its decision on *People* v. *Deutsche Gemeinde*, 249 Ill. 132, and other Illinois cases which are not in point. The question here presented involves the tax exemption of a municipal corporation which was not in issue nor argued in any of those cases. Those decisions moreover involved real property taxes where a lien had already attached; this case involves personal property taxes where no lien had attached.

ARGUMENT.

I.

The Tax Exemption of a Municipal Corporation Becomes Effective Immediately Upon Its Acquisition of Property.

Certain points are not in dispute:

(1) The petitioner is a municipal corporation and is exempt from taxes (Ill. Rev. Stat. 1947, Ch. 111⅔, Par. 303; *People* v. *Chicago Transit Authority,* 392 Ill. 77, 94; Ill. Rev. Stat. 1947, Ch. 120, par. 500, sub. par. 13).

(2) The petitioner acquired the properties in question on September 30, 1947 (R. 86).

(3) The taxes involved in this case are on personal property (R. 68).

(4) The lien for the taxes in question did not attach to the property prior to April, 1948 (R. 78).

A municipal corporation's tax exemption, when the facts are as here, has been given effect immediately upon its acquisition of property in every jurisdiction where the question has arisen. While the Illinois courts have not decided this question, the great body of law upholds that principle. The Illinois decisions followed by the Court of Appeals involved religious and educational institutions. This rule as to religious and educational institutions has not been applied to a municipal corporation.

Wherever the precise question has arisen, upon facts such as appear in this record, the courts have held, without exception, that when title to private property vests in *a municipal corporation,* its tax exemption is effective for

at least that part of the year during which it owned the property.[1]

City of Harlan v. *Blair,* 251 Ky. 51, 64 S. W. (2d) 434, is remarkably similar to this case. There the City purchased property in August of 1932, (but the taxes had already become a lien). It received money from the seller to pay taxes up to the date of sale. The city paid that portion of the taxes and then sued to enjoin collection of that part of the taxes proportional to the part of the year it held the property. The Court granted the injunction, saying:

> "In view of the applicable rule announced in these cited cases, and the reasoning supporting it, we are of the opinion that the appellant's water plant was, upon its purchase or acquisition by the city, a public property, operated for its municipal use; that it then became tax exempt, and the city was thereby relieved from liability for the payment of such prior lien tax, or in the instant case, of the proportional part of the state and county tax lien on the plant for the year 1932 as might be found ratably due for the period of August 20 to December 31, 1932, covered by appellant's ownership and possession thereof, no other portion of such 1932 tax lien being here involved or in controversy."

In *City of Laurel* v. *Weems,* 100 Miss. 335, 50 So. 561, property was conveyed to the city on March 20, 1906. A Mississippi statute provided that taxes were a lien on the property from the first day of February and constituted a liability from that date, although the amount was not

1. *City of Harlan* v. *Blair,* 251 Ky. 51, 64 S. W. (2d) 434; *City of Laurel* v. *Weems,* 100 Miss. 335, 50 So. 561; *Foster* v. *City of Duluth,* 120 Minn. 484, 140 N. W. 129; *City of Portland* v. *Multnomah County,* 135 Ore. 469, 296 P. 48; *State* v. *Reed,* 47 Idaho 131, 272 P. 1008; *State* v. *County of Maricopa,* 38 Ariz. 347, 300 P. 175; *Smith* v. *City of Santa Monica,* 162 Cal. 221, 121 P. 920; *State* v. *Galyon,* 154 Okla. 204, 7 P. (2d) 484; *State* v. *Locke,* 29 N. M. 148, 219 P. 790; *Reid* v. *State,* 74 Ind. 252.

fixed until the levy made the following September. The property was sold for taxes to plaintiff in 1907 and he sued to quiet title. The court distinguished *Baptist Church* v. *McNeal,* 86 Miss. 22, which had refused to recognize a church's proportional exemption (as did the Illinois cases followed by the Court of Appeals), and held the tax sale invalid on the ground that a municipal corporation was involved and its exemption should be given immediate effect despite a pre-existing lien and liability for taxes. The court summed up this ground as follows (p. 338):

> "All exemptions granted from taxation proceed from reasons of public policy, but the public policy involved is not always the same in regard to each exemption granted. The reason why the state exempts the property of religious societies, charitable institutions, schools, colleges, etc., is because of the interest which the public has in the work which these institutions are engaged in and the public good accomplished by them. The exemption of such institution is a mere grace or charity on the part of the state, in recognition of its appreciation of their public usefulness. * * * The exemption of the property of a municipality is founded on the fact that the municipality is a governmental agency of the state, vested by the state with a part of its sovereignty, and employed in aiding the state in matters of government and the execution of its laws."

In *Foster* v. *City of Duluth,* 120 Minn. 484, 140 N. W. 129, the city purchased property in July, 1905, after taxes for that year had been assessed and levied. The taxes were not paid and the land was sold at a tax sale to plaintiff, who brought ejectment against the city. The court held the tax sale invalid on the ground that tax liability ceases when a municipal corporation purchases the property. Here again there was a previous decision of the Supreme Court of Minnesota refusing to recognize a private corporation's proportional exemption under similar circum-

stances (*State* v. *Northwestern Telephone Exchange Co.*, 80 Minn. 17, 82 N. W. 1090).

Referring to that and other cases, the court said:

> "But the cases cited are not authority on the question here, because of the vital fact that this is public property, devoted to a public use, and that the proceedings to enforce payment of the taxes are against the State, or one of its municipal subdivisions. * * * The rule applicable to private property, or to property used for railroad, charitable or quasi public purposes has no force against the State, no application to properties used exclusively for purely public purposes."

These decisions illustrate the universal rule throughout the United States which should be followed in this case. No contrary decisions were cited in the Court of Appeals. The only variation in application of the rule has been in a few cases in which a lien had attached. But as pointed out in the next division hereof, even under that variation petitioner would be exempt for the last three months of 1947.

This Court is asked to give consideration to the fact that in the above cited cases the properties involved were also in the hands of private owners on assessment day and that the courts were confronted with the identical argument relied on by the State of Illinois in this case, to-wit, that the properties were liable for taxes for the entire year because privately owned on assessment day, and that there could, therefore, be no apportionment of taxes. Just as in this case, the private owners were originally liable for the tax involved. But thereafter the municipalities purchased the assessed properties and the exemption was given effect.

In all cases cited the method of collection, or the formal parties to the tax collection procedure, were immaterial.

If the practical effect was to make the municipality liable but for the exemption, the municipality was given the benefit of the exemption.

Here it matters little what method the State has adopted to enforce collection of the 1947 personal property taxes. If the State is successful, petitioner, a tax exempt subdivision of the State, will be compelled to pay one-quarter of the taxes since the trustee is by the plan of reorganization relieved from taxes after the date that title passed to the Authority and the taxes would eventually become a lien on the property acquired.

In the cases cited above, the exemption was given effect without regard to when the tax lien attached. In the next division we cite cases making the exemption effective if, as here, the lien had not yet attached on the date title passed to the municipality.

II.

The Taxes Involved Should be Abated as to the Last Three Months of the Year for the Further Reason That They Were Not a Lien on the Properties at the Time They Were Acquired by Petitioner.

Petitioner acquired the properties on September 30, 1947, and owned them during the last three months of the year. The taxes were not a lien at the time the properties were purchased. This is another reason for giving immediate effect to petitioner's tax exemption.

United States v. *Certain Parcels of Land in Philadelphia,* 130 F. (2d) 782, involved proceedings by the United States condemning land in Philadelphia on March 10, 1941, wherein the city claimed a portion of the purchase price for the real estate taxes assessed against the property. By statute the tax became a lien when assessed, on January 1, 1941, and it was held there could be no apportionment of

the tax for the year. However in that case the Court of Appeals (3 Cir.) stated what it considers the correct rule for the determining whether tax exemptions can be apportioned (p. 73):

> "The correct test as to whether there can be an apportionment, we think, is whether the tax was a lien on the property at the time title vested in the government."

Under that rule the 1947 taxes here should be held void for the last quarter, as under the statute in Illinois the taxes did not become a lien on the properties assessed until the County Clerk delivered the assessment books to the County Collector in April of 1948, several months after title had vested in petitioner. Ill. Rev. Stats. 1947, Chapter 120, Par. 698, provides:

> "The taxes assessed upon personal property, together with all interest that may accrue thereon, shall be a lien upon the personal property of the person assessed, from and after the time the tax books are received by the Collector."

The same test was applied in *City of Wichita* v. *Anderson,* 119 Kans. 241, 237 P. 1024, and held effective not only to apportion the taxes but to exempt the properties for the entire year. There the City purchased the property on October 13, 1922. In Kansas, property was listed and assessed during March, April and May of each year. By statute the tax did not become a lien on the property until the first day of November. The court stated:

> "• • • it must be held that the property, having been purchased by the city before the taxes became a lien thereon, was thereafter exempt from the taxes of 1922."

In a very recent Nebraska case, *Madison County* v. *School District No. 2,* 148 Neb. 218, 27 N. W. (2d) 172 (1947), the defendant school district acquired title to cer-

tain parcels of land after the day of the levy of the taxes. By statute the taxes did not become a lien on the properties until January first of the following year. The court held the property to be exempt from taxes for the entire year of purchase, stating as the reason therefor:

> "The entire taxing process had not been completed when the defendant secured title."

The Nebraska court cited *City of Wichita* v. *Anderson*, 119 Kans. 241, 237 P. 1024, saying:

> "That court held that the property was exempt, it having been purchased by the governmental subdivision before the taxes became a lien thereon. We agree with the conclusions there reached."

The taxing process was far from completed and no lien had attached to the properties in the instant case at the time title vested in petitioner. In fact, even the assessments for 1947 were not finally completed for 1947 in Cook County until some time in October of that year, when all corrections thereof ordered by the Board of Tax Appeals were made, and the books were delivered to the County Clerk for making extensions and determining the tax rate. None of said taxes were extended by the County Clerk until March, 1948. It is submitted that practically the entire taxation process took place after petitioner acquired the properties on September 30, 1947.

The cases cited under Point I would seem to compel the granting of the exemption as claimed by the petitioner. But even under the variation of the rule as illustrated in the cases cited in this Point II, the exemption clearly should have been given effect.

This considerable and unchallenged body of law was disregarded by the Court of Appeals in its pronunciation of a rule for Illinois.

III.

People v. Deutsche Gemeinde and Other Illinois Cases Held Controlling by the Court of Appeals Are Not in Point for the Reason That None Involved a Municipality and for the Additional Reason That They Involve Real Property Taxes for Which Statutory Liens Had Attached Prior to Their Transfer.

All of the Illinois cases cited by the Court of Appeals, as well as a few additional cited by the State in its brief, deal with religious, educational or charitable corporations. None passes on prorata exemption in favor of a municipality. In view of the constant distinction made by the courts between the former and the latter type of corporations, those Illinois cases are manifestly not in point. Nor is there anything in the statutes of Illinois which indicates an intention to depart from the unbroken trend of decisions in the commonwealths of this nation. Each state has, of course, a so-called "assessment date." But that circumstance did not, in the decided cases, militate against the application of the general rule which upholds the prorata exemption of a municipality for the period of time which it held the property in the first year of acquisition.

City of Chicago v. *McCausland,* 379 Ill. 602, 606, presents strong reasons for believing that the Illinois courts would follow the weight of authority. There the City of Chicago filed condemnation proceedings on February 17, 1926, to acquire certain property for public purposes. Taxes for the years 1927, 1928 and 1929 were levied and assessed against the property involved. Title was not acquired by the City until June 30, 1929. The Supreme Court of Illinois held that title once acquired related back to the inception of the proceedings and had the effect of wiping out the several years' taxes which had

been assessed between the inception of the action and the date of final acquisition of title by the municipality.

Moreover, the cases cited by the Court of Appeals apparently leaned heavily upon the circumstance that the taxes there assessed, which were on real estate, had already become a lien on the property prior to the date of acquisition.

The first of those cases is *People* v. *Deutsche Gemeinde*, 249 Ill. 132, 94 N. E. 162. The court quoted very briefly therefrom, as follows:

> "The Revenue Act fixes the first day of April in each year for determining the status of property for taxation, * * * although the amount of the taxes has not been determined on the first day of April. The *liability to taxation* and the lien for whatever taxes may be levied for that year are fixed on that day."

The full quotation indicating that the prior attachment of a lien was the vital consideration in denying the tax exemption follows:

> "The Revenue Act fixes the first day of April in each year for determining the status of property for taxation *and provides that taxes upon real property, with penalties, interest and costs that shall accrue thereon, shall be a prior and first lien on such real property from and including the first day of April in the year in which the taxes were levied, although the amount of the taxes has not been determined on the first day of April.* The liability to taxation and the lien for whatever taxes may be levied for that year are fixed on that day. * * * There is no language in the statute exempting property from taxation which shows the purpose to give it retrospective operation *by releasing the statutory lien,* and without such operation the property here involved was not exempt from taxes for the year 1909." (Emphasis ours.)

It seems apparent from the full quotation that the Illinois Court's decision was based on the fact that a

statutory lien for real property taxes had attached on April first.

In *The People* v. *Ladies of Loretto,* 246 Ill. 403, 92 N. E. 908, another case relied on by the State involving real property taxes, exemption was denied for the same reason, the Court stating:

> "The lien of the State for taxes of the year 1909 attached to the property on the first day of April of that year when it was subject to taxation, and being charged with the lien it was not relieved therefrom by the fact that the corporation acquired title afterward."

Those two decisions are obviously based upon the reasoning that because the lien had attached the properties could not be held exempt for any part of the year subsequent to the lien date. It is not illogical to infer that had the lien not yet attached, and had the litigant been a municipal corporation, the opposite result would have been reached.

The statute in Illinois providing for real property tax liens (Ill. Rev. Stats. 1947, Ch. 120, par. 697), provides:

> "The taxes upon real property, together with all penalties, interests and costs, that may accrue thereon, shall be a prior and first lien on such real property, superior to all other liens and incumbrances, from and including the first day of April in the year in which taxes are levied * * *."

The matter at hand involves personal property taxes, the statutory lien of which did not attach until some time in April of 1948, more than six months after petitioner had acquired the properties.

IV.

The Writ Should be Allowed Because There is a Conflict Between the Decision of the Court of Appeals in This Case and the Great Mass of Local Law Developed in the States, as Well as a Conflict With the Rule Announced by the Court of Appeals for the Third Circuit.

The decision of the Court of Appeals directly conflicts with the decisions of the state courts which have passed on the question involved herein.[1]

While those cases do not establish the law for Illinois, they do constitute a consistent course of authoritative opinion which the Illinois courts could not well disregard, unless the cases could on some substantial ground be distinguished. No attempt has been made, either by the Court of Appeals or by counsel for the State, to point out any distinction between the basic taxing theory in Illinois and in the states that have decided this issue. To rely, as did the lower court, on cases involving religious, educational and charitable corporations, which under all adjudicated cases stand on a different footing, is to evade rather than to establish a correct principle.

The decision here is also at variance with the "tax lien" theory of exemption as enunciated by the Third Circuit in *United States* v. *Certain Parcels of Land in Philadelphia*, 130 F. (2d) 782.

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1. *City of Harlan* v. *Blair*, 251 Ky. 51, 64 S. W. (2d) 434; *City of Laurel* v. *Weems*, 100 Miss. 335, 50 So. 561; *Foster* v. *City of Duluth*, 120 Minn. 484, 140 N. W. 129; *City of Portland* v. *Multnomah County*, 135 Ore. 469, 296 P. 48; *State* v. *Reed*, 47 Idaho 131, 272 P. 1008; *State* v. *County of Maricopa*, 38 Ariz. 347, 300 P. 175; *Smith* v. *City of Santa Monica*, 162 Cal. 221, 121 P. 920; *State* v. *Galyon*, 154 Okla. 204, 7 P. (2d) 484; *State* v. *Locke*, 29 N. M. 148, 219 P. 790; *Reid* v. *State*, 74 Ind. 252.

Conclusion.

Because of a disregard of what is clearly the law of the land, and also because of the immediate financial importance to the petitioner in these, its early years of public ownership, we respectfully ask that the writ issue and that the judgment of the Court of Appeals be reversed.

Respectfully submitted,

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